

Amendment Dated 05 June 2006  
Responsive to Office Action Mailed 25 April 2006

Application Number 10/775,465  
Art Unit 3743, Examiner Lopez

### **REMARKS**

Claims 2-5, 7, 9-14, and 17-20 are pending in the application. Claims 2-5 and 17-20 are objected to. Claims 1, 7, 15, 16, and 23-27 are rejected. Claims 1, 15, 16, and 23-27 have been cancelled to expedite prosecution and Applicant reserves the right to pursue these claims in a continuation of the present application.

### **Response**

#### **Claim Objections**

Claim 7 is objected to because it was mistakenly labeled as "currently amended" in the response transmitted on 18 April 2006 when it should have been labeled as "previously presented." Applicant thanks the Examiner for noting the error. Claim 7 is actually amended in the present amendment and has been labeled accordingly.

The objection to claim 15 over an error in the language of the preamble is moot in view Applicant's cancellation of this claim. Nevertheless, Applicant appreciates the professional attention to detail and thanks the Examiner for the careful examination.

#### **Claim Rejections – 35 U.S.C. §102**

The rejection of claims 23, 26, and 27 under 35 U.S.C. 102(b) as being anticipated by US 5,042,467 (Foley) are moot in light of Applicant's cancellation of these claims. Claims 23, 26, and 27 have been cancelled solely to expedite the allowance of other claims in the present application. Cancellation of these claims does not indicate Applicant's agreement with the above rejection.

Claims 1, 7, and 15 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent Application Publication No. 2004/0094148 (Lulla).

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Lulla does not disclose or suggest a spacer comprising first and second conical bodies having large diameter distal ends and small diameter proximal ends.

The Lulla publication discloses a spacer made of two frustoconical members joined at their wider ends. This is not to be confused with the presently claims invention, which is a spacer comprising first and second conical bodies having large diameter distal ends and small diameter proximal ends. The terms "proximal" and "distal" have not been applied in this rejection as they are used in the art or as specified in the present specification. "Proximal" is used to identify that which is closer to the mouth while "distal" is used to identify that which is farther away from the mouth. More generally and in medical terminology, "proximal" means closer to the center of the body and "distal" means farther away from the center of the body. The Lulla publication discloses a spacer comprising a first conical body having a larger distal end and smaller proximal end and a second body having a small distal end and a large proximal end. The structure specified by Lulla is visibly, descriptively, and functionally distinct from that recited in present claim 1.

Claims 1, 7, and 15 have been cancelled solely to expedite the allowance of other claims in the present application. Cancellation of these claims does not indicate Applicant's agreement with the rejection of these claims.

#### **Claim Rejections – 35 U.S.C. §103**

The rejection of claim 16 under 35 U.S.C. 103(a) as being unpatentable over US Patent Application Publication No. 2004/0094148 (Lulla) in view of US 5,809,996 (Alldredge) is moot in light of Applicant's cancellation of this claim. Claim 16 has been cancelled solely to expedite the allowance of other claims in the present application. Cancellation of this claim does not indicate Applicant's agreement with the above rejection.

The rejection of claims 24 and 25 under 35 U.S.C. 103(a) as being unpatentable over US 5,042,467 (Foley) in view of US Patent Application Publication No. 2004/0094148 (Lulla) is

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moot in light of Applicant's cancellation of this claim. Claims 24 and 25 have been cancelled solely to expedite the allowance of other claims in the present application. Cancellation of these claims does not indicate Applicant's agreement with the above rejection.

#### **Allowable Subject Matter**

Claims 2-5 and 17-20 are objected to as being dependent upon a rejected base claim. Applicant has amended these claims to include all of the limitations of the base claim and any intervening claims.

Claims 9-14 are indicated as allowable by the Examiner.

#### **Conclusion**

Applicant has amended claims 2, 7, and 17. Claims 1, 6, 8, 15, 16, and 21-27 are cancelled. Applicant believes that the present amendments and arguments have addressed all outstanding claim rejections and objections. Allowance of the pending claims in the application is respectfully requested.

Respectfully submitted,



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